
UNITED STATES OF AMERICA

v.

SALIM AHMED HAMDAN

)
)
) DEFENSE REQUEST FOR RELIEF:
) BILL OF PARTICULARS AND
) DUPLICITY
)

) 29 October 2004
)
)

1. Relief Sought. That the Government provides the Defense and Commission Members with the specific elements that it believes it must prove in order to prove up the charge of conspiracy against Mr. Hamdan, and to sever the triable offenses as listed in the conspiracy specification and charge.

2. Facts

a. On 13 July 2004, Mr. Hamdan was charged with a single specification and charge of conspiracy.

b. The conspiracy charge includes the countries of Afghanistan, Pakistan, Yemen and “other countries.” The conspiracy charge includes the timeframe of on or about (no day specified) February 1996 to on or about 24 November 2001. The conspiracy charge alleges Mr. Hamdan conspired with Usama Bin Laden, Saif al Adel, Dr. Zawahari, Muhammad Atef and “other members and associates of the al Qaida organization, known and unknown.” The conspiracy charge alleges agreement to commit certain offenses: “attacking civilians; attacking civilian objects; murder by an unprivileged belligerent; destruction of property by an unprivileged belligerent; destruction of property by an unprivileged belligerent; and terrorism.”

c. Where “findings are vague and ambiguous and failed to reflect what facts constituted the offense” the result is a “lack of proper review.” U.S. v. Walters, 58 MJ 391 (CAAF 2003).

d. It is improper for the Government to seek, at one and the same time, (a conviction against an accused) with a general course of misconduct over a stated period of time and to select from that... a specific act to be alleged as a separate offense.” U.S. v. Maynazarian, 12 USCMA 484 (1961).

e. When the defense is seeking a specific time/date/place, it should file a bill of particulars. U.S. v. Lewis, 51 MJ 376 (CAAF 1999).

f. The charge and its specification as currently written is both vague and duplicitous. The Defense is not aware of the specific time/date (missing day) and place (“other countries”) in the offense. Further, the charge and its specification alleges triable offenses as part of the conspiracy offense, but are not separate offenses and as such have no specific elements attached to them to prove up the conspiracy charge.

3. Legal Authority Cited.

- a. U.S. v. Walters, 58 MJ 391 (CAAF 2003)
- b. U.S. v. Maynazarian, 12 USCMA 484 (1961)
- c. U.S. v. Lewis, 51 MJ 376 (CAAF 1999)

4. Why Relief Is Necessary. To inform the accused of the nature of the charge with sufficient precision to enable the accused to prepare for the military commission, to avoid or minimize the danger of surprise at the time of the military commission, and to enable the accused to plead the acquittal or conviction in bar of another prosecution for the same offense.

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